



INSURANCE

Dave Heineman
Governor

L. Tim Wagner
Director

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Department Discontinues Issuance of Home Office Employee License

A recent review of our producer licensing lines of authority has resulted in the discontinuance of issuing home office employee licenses. The home office employee license is a limited lines license, and we are currently no longer issuing new licenses for this insurance line.

The home office employee license currently held by individuals in the state of Nebraska will expire on the renewal date and will not be eligible to be renewed as a home office employee line of authority.

The Nebraska Insurance Producer Licensing Act exempts certain persons, including employees of an insurer or an insurance producer, from licensing as an insurance producer under Section 44-4051(2)(a) through (g).

Should any of these exemptions not be met and an individual needs to obtain a Nebraska resident producer license, he/she is required to take the insurance examination(s) for the line of authority of the insurance products that he/she will be selling. In addition, an application for a resident producer license must be completed and submitted with a fee of \$20.00. Please note that the prelicensing education requirements will be waived if he/she decides to obtain a producer license on or before the current license expiration date.

It is important to note that if a Nebraska resident producer license is not obtained, the home office employee license will expire on the next renewal date printed on the current license.

Please visit our website at www.doi.ne.gov for information on obtaining a resident producer license. Any questions concerning producer licenses may be directed to the Producer Licensing Division at 402-471-4913.

PRODUCER LICENSING DIVISION

Rebate and Inducement Guidelines

Two questions most commonly asked by producers regarding rebating are (1) whether a producer can offer a gift to a prospective client, and (2) whether the producer can pay for a referral.

A producer may give inexpensive gifts to prospective insureds so long as such gifts are provided on a non-discriminatory basis and so long as receipt of the gift is not conditioned upon the prospective client actually purchasing a policy of insurance.

If a producer wants to have a drawing for an item of more substantial value, he/she must ensure that all potential customers are given the opportunity to enter, on a non-discriminatory basis, and entry is not conditioned on the purchase of insurance.

The statute prohibiting rebates and inducements is Neb.Rev.Stat. §44-361. In addition, to a certain extent, §44-4060, which requires certain persons to be licensed if commission is shared, is applicable. To provide general information, there are two questions most commonly asked by producers regarding rebating: first, whether a producer can offer a gift to a prospective client, and second, whether the producer can pay for a referral.

A producer may give inexpensive gifts to prospective insureds so long as such gifts are provided on a non-discriminatory basis and so long as receipt of the gift is not conditioned upon the prospective client actually purchasing a policy of insurance. Most often, the gifts include pens, calendars, road maps, and things of that nature. The producer should seriously consider the value of the gift. At some point, the value could be considered sufficiently great to constitute an "inducement" to insurance.

Drawings for prizes are also considered to be "gifts." In one case, a title agent wanted to have a drawing to give away a TV, but the agent wanted only the referring real estate agents to qualify. This would have violated §44-361. If a producer wants to have a drawing for an item of more substantial value, he/she must ensure that all potential customers are given the opportunity to enter, on a non-discriminatory basis, and entry is not conditioned on the purchase of insurance.

Producers may purchase a list of names from an entity such as a bank or real estate firm assuming that payment of the purchase price is not contingent upon the purchase of any insurance by any person on the listing. The payment could be made on a per name basis or a per list basis, but cannot be contingent on the purchase of insurance. Due to privacy issues and do-not-call lists, this may not be an effective means for referrals today. If a producer were to encourage referrals from his/her own customers, the producer should be very careful about how that program is set up. The payment should be nominal and not conditioned on the referred name purchasing insurance. In addition, the customer should have already purchased insurance from the

If a producer were to offer payment for successful sales only, the payment is considered commission and could only be made to an appropriately licensed person.

producer in order to avoid the appearance of rebate or inducement for the person referring the names. If a producer were to offer payment for successful sales only, the payment is considered commission and could only be made to an appropriately licensed person.

Further questions can be directed to Jason McCartney, Administrator of the Producer Licensing Division, at 402-471-2201 or by e-mail at jason.mccartney@doi.state.ne.us.

LEGAL DIVISION

Court Cases

Bennett v. St. Elizabeth Health Systems, __ N.W.2d __ (March 30, 2007)

Bennett sustained an injury to her left shoulder at work while attempting to lift a patient out of a chair. Bennett underwent surgery to repair the injury, and the doctor prescribed physical therapy treatment. After four physical therapy sessions, Bennett claimed that the therapy had reinjured her shoulder, and she underwent a second surgery to repair the damage. St. Elizabeth's workers' compensation insurance paid for the medical expenses in addition to disability and other unspecified benefits.

Bennett subsequently filed a medical malpractice claim against Saint Elizabeth in Lancaster County district court, alleging that Saint Elizabeth was negligent in its performance of physical therapy. The district court dismissed the suit, stating that it was barred by the exclusivity provisions of the Workers' Compensation Act, Neb.Rev.Stat. §§48-111 and 48-148.

The issue on appeal is whether Bennett's suit is in fact permissible since the second injury was sustained not in the performance of her work duties, but while she was a patient of St. Elizabeth. The Supreme Court concluded that since Bennett would not have pursued physical therapy but for the original compensable injury, the second injury is sufficiently related to her employment to bar suit.

The Court declined to adopt the "dual-capacity" or "dual persona" doctrines, which state that if an employer assumes a role with responsibilities independent and distinct or wholly different from those of an employer, the employer may become liable to the employee in tort.

In re Amwest Surety Ins. Co., in Liquidation, Case No. CI 01-2102 (January 25, 2007)

Amwest Surety Ins. Co. (hereinafter “ASIC”) was ordered into liquidation, with L. Tim Wagner, Director of Insurance, designated as Liquidator. The Liquidator brought suit against certain former directors and officers of ASIC for breach of their fiduciary duties of good faith, loyalty, and diligence, resulting in harm to ASIC, the Liquidator, and ASIC’s policyholders, creditors, and sole shareholder, AIG. The Liquidator alleged that the Defendants “[failed] to meaningfully consider or arrange for a sale of or strategic partnership for ASIC.” The Liquidator further alleged that the directors and officers engaged in an uninformed market focus shift, misrepresented ASIC’s financial affairs, and used subsidiary Far West’s liquidity to support ASIC as a going concern. The Liquidator claimed damages of more than \$53 million.

The court held that directors and officers could not eliminate their duty of good faith owed to the corporation or its shareholders through an exculpatory clause in the articles of incorporation. Further, the court held that the directors and officers owed the duties of loyalty, care, and good faith to the creditors and policyholders, in addition to the shareholders, as long as the company was in the “zone of insolvency.”

Roman v. Werner Enterprises, Inc., Case No. A-06-809 (April 3, 2007)

Roman alleged that he sustained a back injury on June 6, 2003, when he attempted to crank down the landing gear for a trailer. The Workers’ Compensation Court held that Roman failed to establish that he suffered a compensable injury as there was evidence that Roman had a history of intermittent back pain and did not mention the injury to the treating doctor. The single judge therefore entered an order of dismissal, and it was affirmed by the review panel.

The Court of Appeals concluded that the Workers’ Compensation Court judge did not abuse his discretion in allowing the use, for impeachment purposes, of Roman’s testimony at a workers’ compensation hearing in New York, recognizing that the Nebraska Workers’ Compensation Court is not bound by typical statutory rules of evidence or rules or procedure. See Neb.Rev. Stat. §48-168(1) (Cum. Supp. 2006). The court also dismissed Roman’s claim that a non-treating doctor’s report should not have been admitted. The court concluded that Workers’ Comp. Ct. R. of Proc. 10 (2006) is not restricted to physicians and other medical professionals that actually participated in treatment.

Finally, the court affirmed the holding that there was no compensable injury. Despite conflicting reports from several medical professionals and Werner employees, the judge was entitled to evaluate the credibility of the witnesses and assign weight to their testimony, and the judge’s factual findings are not clearly wrong.

Actions Taken Against Producers

CAUSE NO.	ALLEGATION	DISPOSITION
A-1668 Cristina Gonzales Omaha, NE	Respondent appealed decision revoking her license to the Lancaster County District Court, Case ID: CI 06-3926.	Revocation upheld by the Court 3/29/07
A-1696 Judy L. Simpson Omaha, NE	Violated <u>Neb.Rev.Stat.</u> §§44-319 & 44-4059(1)(b). Fiduciary violations; violated any insurance law.	Consent Order Producer license revoked 2/2/07
A-1701 Platte Valley Title & Escrow, Inc., Platte Valley Escrow Closing Co., & Joyce A. Low Omaha, NE	Violated <u>Neb.Rev.Stat.</u> §§44-1525(11), 44-19,109(3), 44-19,116(1), 44-4059(1)(b),(g) and (h). Failed to respond; failed to maintain surety bond or letter of credit; escrow and/or closing account violations; violated any insurance law; unfair trade practices.	Order Producer and agencies' licenses revoked 1/22/07
A-1703 Paul J. Cadwallader Omaha, NE	Violated <u>Neb.Rev.Stat.</u> §§44-1525(11), 44-4054(8), & 44-4059(1)(b) & (h). Failed to respond; failed to change address within 30 days; violated any insurance law; and used-fraudulent, coercive, or dishonest practices.	Consent Order Producer license revoked 2/13/07
A-1705 Lane J. Hastings Omaha, NE	Violated <u>Neb.Rev.Stat.</u> §§44-1524, 44-1525(11) & 44-4059(1)(b). Unfair trade practice violation; failed to respond; and violated any insurance law.	Consent Order \$1,000 admin. fine 1/26/07
A-1706 Kenneth S. Patterson North Platte, NE	Violated <u>Neb.Rev.Stat.</u> §§44-4059(1)(b) and (h). Violated any insurance law; used fraudulent, coercive, or dishonest practices.	Consent Order \$1,000 admin. fine 1/26/07
A-1708 Jeffery M. Carley Omaha, NE	Violated <u>Neb.Rev.Stat.</u> §§44-1525, 44-4057, 44-4054(8) & 44-4059(1)(b). Failed to respond; failed to notify the department of "doing business as" name; failed to change address within 30 days; violated any insurance law.	Consent Order \$500 admin. fine 2/22/07
A-1710 Kevin Crock Clive, IA	Hearing requested for reconsideration of denial of application for resident producer license.	Order Producer license granted 3/6/07
A-1711 Midlands Title & Abstract, Inc. & Melinda R. Reeder Omaha, NE	Violated <u>Neb.Rev.Stat.</u> §44-19,112(3). Failed to file required form with the department.	Consent Order \$500 admin. fine 3/2/07

Actions Taken Against Companies

CAUSE NO.	ALLEGATION	DISPOSITION
C-1618 Cooperative Mutual Insurance Company Omaha, NE	Violated <u>Neb.Rev.Stat.</u> §§44-1524, 44-1525(11), 44-1539, 44-1540(1) & Title 210 NAC Chapter 60 §§006.02 & 008.08. Unfair trade practice violations; failed to reply to claimant within required time; failed to inform claimant of the right to contact the department due to a denied claim.	Consent Order \$2,000 admin. fine 2/13/06
C-1623 Allianz Life Insurance Company of North America Minneapolis, MN	Violated Title 210 NAC Chapter 19 §§ 008.02B & 010.40, and <u>Neb.Rev.Stat.</u> §44-1529. Replacement violations on annuity applications; unfair trade practice violation.	Consent Order \$500 admin. fine 3/7/07

PROPERTY AND CASUALTY DIVISION

Property/Casualty Guidelines

The Property/Casualty Guidelines currently include a list of the current workers' compensation carriers in the state along with the Loss Cost Multiplier currently in place for each.

The Property/Casualty Guidelines found on the Department's website currently include a list of the current workers' compensation carriers in the state along with the Loss Cost Multiplier currently in place for each. We update this list as companies make filings to change.

Contact gyounger@doi.state.ne.us if the Loss Cost Multiplier for your company is listed incorrectly.

Please review our website at <http://www.doi.ne.gov/pc/lcm.pdf> and make sure the Loss Cost Multiplier for your company is correct. If it is incorrect, we would appreciate your contacting the Property Casualty Division at 402-471-2201 or via e-mail at gyounger@doi.state.ne.us and letting us know what the correction should be and when the change was made with us.

Use of Subjective Rating for Farms, Ranches and Agribusiness

We have received questions and complaints on a semi-regular basis from producers and insurers alleging that other producers and insurers are using plus/minus 40% rating flexibility on agricultural accounts to which such rating flexibility does not apply. Typically, the complaint involves an account written on some form of commercial policy, with the underwriter apparently believing that this allows the use of the plus/minus rating flexibility. That is not correct. Farm and ranch exposures are not subject to the plus/minus 40% rating flexibility provided in Neb. Rev.Stat. §44-7509, regardless of the policy form, and regardless of whether non-farm, non-ranch business is included.

Consider a common example. A farmer also sells seed and fertilizer. Coverage for farming operations is not subject to the plus/minus 40% rating flexibility, but coverage for sales of seed and fertilizer is subject to the rating flexibility. This is the case regardless of whether the farm exposure is covered under the same policy or a different policy as the seed and fertilizer exposure, and it is the case regardless of whether a policy is labeled a farmowners policy or is labeled a commercial policy. The law applies to the exposure; the nature of the policy form is immaterial.

In this newsletter, we cannot exhaustively cover every distinction between farm and ranch exposures, and those that we consider to be something else. Briefly, however, we consider the growing and harvesting of crops on land owned or rented by the policyholder to be farming, and we consider the raising and feeding of livestock being raised for eventual slaughter, regardless of who actually owns the livestock, to be ranching. This includes feedlot operations. Common operations that we consider to be commercial and subject to the plus/minus 40% rating flexibility include the sales of anything other than the unprocessed products (crops or animals) raised by the policyholder; stables, pet boarding, food processing...and the list goes on.

Some of the more complex situations that we have run into involve operations where the manual premium is in excess of \$75,000. When this is encountered, recall that farm and ranch premiums—while they are not subject to the plus/minus 40% rating flexibility—ARE subject to so-called "exempt commercial policyholder" rules that involve rate deregulation for policyholders with total premiums of \$75,000 or greater.

For further information, please refer to Title 210, Chapter 73, "Exempt Commercial Policyholders," which can be found on the Department's website at http://www.sos.state.ne.us/business/regsearch/Rules/Insurance_Dept_of/Title-210/Chapter-73.pdf.

Any questions concerning the use of subjective rating may be directed to Alan Wickman, Casualty Actuary, at 402-471-2201 or awickman@doi.state.ne.us.

Property/Casualty Division—Nebraska

Contact Information
(All Filings including SERFF)
as of 3/1/07

Gina Younger, Staff Assistant

402-471-4805

gyounger@doi.state.ne.us

Filing Fees

Status Requests

Mail Distribution/Matching/Filing

Inland Marine/Personal-Commercial

Personal Liability

Personal Lines Property

Bev Anderson

Administrator

402-471-4654

bev_anderson@doi.state.ne.us

Lawyers Professional

Professional Liability

Directors & Officers

Aircraft

Title

Credit, Credit Property

Miscellaneous

Crop Hail

Auto Warranty

Medical Malpractice

Chris Williamson

402-471-4653

cwilliamson@doi.state.ne.us

Other Dwelling Packages

Mobile Homeowners

General Liability

Commercial Package

Crime

Mortgage Guaranty

Personal Umbrella/Excess

Boat Owners

Boiler and Machinery

Fidelity & Surety

Farm – Monoline/Package

Connie Van Slyke

402-471-4647

cvanslyke@doi.state.ne.us

Professional Liability

Directors and Officers

Commercial Umbrella & Excess

Commercial Package

General Liability

Work Comp

Stephanie Hobelman

402-471-4651

shobelman@doi.state.ne.us

Homeowners

Personal Auto

Combination-HO/Auto

Home With Business

Recreational Vehicle

Commercial Auto

Commercial Property

Medical Malpractice Excess Liability Fund

Stephanie Hobelman

402-471-2664

FRAUD DIVISION

Annual Insurance Fraud Conference

The Department of Insurance, Insurance Fraud Prevention Division, will hold the 7th Annual Insurance Fraud Conference on June 13, 2007 at Mahoney State Park.

David J. Proctor, Attorney at Law, will address the attendees on “red flags,” circumstantial evidence and bad faith. Mr. Proctor’s areas of practice include insurance fraud and property insurance although all areas of insurance will find his presentation of interest. Mr. Proctor is an instructor for several federal law enforcement agencies and very well respected in his area of expertise.

The afternoon will consist of two concurrent sessions:

Douglas Ashbridge, Director of SIU for Farmers Insurance Group, will address attendees on “auto body fraud.” Although most businesses conduct legitimate business practices, the National Highway Traffic Safety Administration estimates consumers lose tens of billions of dollars, annually, due to faulty or unnecessary car repairs. Mr. Ashbridge will address specific issues regarding this type of fraud and strategies in preventing abuse.

Senior Investigator **Gary Agger**, UnumProvident Insurance, will provide a presentation specifically addressing “disability fraud” and related issues. His presentation will take attendees through the process of an investigation to include the collection of evidence through successful resolution.

Both the Insurance Fraud Seminar and the Law Enforcement Seminar following on June 14th will have opening remarks provided by **Joe W. Stecher**, United States Attorney.

To request a registration brochure, please send an e-mail to the Fraud Division’s administrative assistant, Connie Drake, at cdrake@doi.state.ne.us.

Previous Owner of Metro Glass, Inc. Charged With Insurance Fraud

Donald W. Kleine, Douglas County Attorney, announced the filing of criminal charges against Thomas J. Dimitroff, the **previous owner** of Metro Glass Incorporated, an Omaha-based provider of auto glass replacement and repair. On Friday, March 23, 2007, Mr. Dimitroff was arrested on five felony counts of insurance fraud. The investigation of Mr. Dimitroff was conducted by the Nebraska Department of Insurance, Fraud Prevention Division, in conjunction with the Douglas County Attorney’s Office.

Mr. Dimitroff is charged with five felony counts of fraudulent insurance acts pursuant to Neb. Rev.Stat. §28-631. Four of the five counts are Class III felonies, potentially carrying a sentence of a minimum of one-year imprisonment to a maximum of 20 years' imprisonment, or \$25,000 fine, or both. The remaining count is a Class IV felony potentially carrying a sentence of up to five years' imprisonment, or \$10,000 fine, or both.

Mr. Dimitroff is charged with submitting fraudulent invoices for auto glass repair and replacement to five different property and casualty insurance companies. The fraudulent billings are alleged to have occurred over a period spanning three years (March, 2004 to March, 2007) resulting in a loss of approximately \$90,000. In all, 151 victims have been identified in a scheme in which Mr. Dimitroff is accused of submitting fraudulent invoices on behalf of, and without the knowledge of, consumers to the companies and/or their third-party administrators for payment.

The goal of the Department of Insurance Fraud Prevention Division is to decrease premiums going towards paying fraudulent claims. We are pleased to work with the Douglas County Attorney's Office in fighting insurance fraud in our community.

EXAMINATION DIVISION

Surplus Lines Reports

Quarterly Reports: As required by Neb.Rev.Stat. §44-5511 R.R.S. (Reissue 2004), "...No later than thirty days after the last day of each calendar quarter, every surplus lines licensee shall file with the department a report containing such information as the department may require..." Effective with the March 31, 2007 Surplus Lines Quarterly Report, every surplus lines licensee (both individual and agency) must file a quarterly report even if no business was written during the quarter. If no business was written, this must be noted on the report.

The required information has changed slightly. The Amount of Insurance or Limit of Exposure column is no longer required. However, Column 1, NAIC Number of the company with which the business was placed is required. The NAIC number and the premium received and the return premium amounts will be used to summarize each company's premium volume in the surplus lines market for Nebraska. This summary information will then be verified with premium information the company reports to the NAIC to determine if all surplus lines premiums/taxes have been reported/paid to the Department.

Annual Reports: As required by Neb.Rev.Stat. §44-5506 R.R.S. (Reissue 2004), "Every surplus lines licensee (both individual and agency) transacting business under the Surplus Lines Insurance Act shall annually, on or before February 15 in each year, make and file with the department a verified statement upon a form prescribed by the department..."

Effective with the Surplus Lines Annual Report due on or before **February 15, 2008**, every surplus lines licensee must file an annual report even if no business was written during the year. If no business was written, this must be noted on the report.

In order to assist in the preparation of the quarterly and annual reports, spreadsheets that perform the calculations of the taxes owed and Adobe Acrobat forms for manual preparation can be found on our website at http://www.doi.ne.gov/surplus_lines/sl_index.htm. You are strongly encouraged to use the Excel spreadsheets when completing your reports. If you do not use the spreadsheets, you can either use the quarterly and annual reports included with the notice mailed on March 8, 2007, or use your own form that includes all of the information found on the included reports. Instructions on completing these forms, which are included within the tabs located in the spreadsheet files and also included with the Adobe Acrobat forms on our website, should be reviewed. The instructions include directions for completing the Excel forms, but also apply for completing the forms manually.

Any questions may be directed to Gary Timm at gtimm@doi.state.ne.us.

Pre-Need Exams Completed During First Quarter, 2007

Carpenter-Breland Funeral Home
Chamberlain Chapel, Inc.
Chermok Funeral Home, Inc. dba Roberts-Chermok Funeral Home, Inc.
Holechek Funeral Homes, Inc.
Miller Funeral Home, Inc.
Pelan Funeral Services-Oakland
Schumacher-Hasemann Funeral Homes, Inc.
Seger Funeral Home, Inc.
Snider Memorial Funeral Home

Financial Examinations Completed During First Quarter, 2007

Acceptance Insurance Company
Nebraska Intergovernmental Risk Management Association
Nebraska Intergovernmental Risk Management Association II
Pacific Life Insurance Company

Financial examination reports become public documents once they have been placed on official file by the Department. Copies may be obtained from the Department at the cost of \$.50 per page.



Department Calendar

- May 28: Department Closed - Memorial Day
- June 13: Annual Fraud Seminar (registration required)
Eugene T. Mahoney State Park
- July 4: Department Closed - Independence Day



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